

November 20, 2000

Mr. Harry Schueller, Chief
State Water Resources Control Board
Division of Water Rights
P.O. Box 2000
Sacramento, CA 95812-2000

**Re: Comments for November 27, 2000 Public Meeting
For Improving the Water Right Process and Procedures**

Dear Mr. Schueller:

Thank you for the invitation to participate in the upcoming Public Meeting to discuss ways to improve the water right process. Presently, this process is so burdensome that even the most diligent applicants must wait, in many cases, 5, 7 and 10 years for a permit. This is clearly unacceptable. The water right process needs to be streamlined so that proposed projects can be processed in a timely manner, consistent with implementation of sound and reasonable environmental protection measures. The current situation prevents both of these objectives from occurring.

We plan to attend the Public Meeting on November 27th and are making the following recommendations:

- Expand the types of water use that qualify for Small Domestic Use Registration
- Streamline Department of Fish & Game consultations
- Allow or require Applicants to provide CEQA Documents for SWRCB review
- Conduct Field Investigations *after* the CEQA document has been circulated
- Reevaluate and, if necessary, redirect Compliance Unit tasks

The preceding issues are discussed in more detail below.

Statutory Modifications

- *Expand Small Domestic Use Registrations to include other purposes of use up to the 10 acre-foot limitation.*

There is no sound reason why the diversion and use of 10 acre-feet of water for domestic purposes should be addressed differently than for other uses. Land use issues are typically addressed at the local (county) level whether or not a water right permit is

required. This statutory modification will result in significantly less staff time being spent on processing applications for small, relatively inconsequential projects. The SWRCB should make certain that the Department of Fish and Game understands that projects covered by Registrations are exempt from CEQA.

Administrative Actions

- *Applicants should only be required to have a single consultation with the Department of Fish and Game for the project named in the water right application.*

The Applicant is now required to consult with the Department of Fish & Game (DFG) at least three times during the permit process. Once to resolve protests, again during review of the draft CEQA document, and a third time to obtain a Streambed Alteration Agreement pursuant to Section 1600 of the Fish & Game Code. These consultations result in varying and inconsistent mitigation requirements for the same project causing delay and confusion for SWRCB staff and the Applicant.

The SWRCB's process should not *require* resolution of DFG protests (and other environmental protests) prior to initiation of CEQA review. Protest negotiations and Field Investigations are often conducted "in the dark" because no environmental information has been developed. As a responsible agency under CEQA, DFG should actively participate in the SWRCB's CEQA process to develop environmental protection terms mutually agreeable to the SWRCB and the Applicant. Prior to certification of the environmental document by the SWRCB, a Memorandum of Understanding should be signed by the SWRCB and DFG stating that the CEQA analysis conducted by the SWRCB is satisfactory to DFG, that the environmental protection terms in the water right permit will suffice for the Streambed Alteration Agreement, and that no additional terms or CEQA review will be required by DFG in connection with the issuance of the Streambed Alteration Agreement.

- *Allow or require Applicants to submit an initial study and draft negative declaration (or recommendation for an EIR) that has been prepared by a qualified professional in coordination with SWRCB staff.*

SWRCB staff should act as a "reviewing" entity for environmental documents. As with other permitting agencies, the SWRCB should direct the scope of the document and provide comments on the administrative draft.

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- *Field Investigations for minor projects should not be conducted until after the environmental document has been drafted and distributed.*

When protests are filed against a project for environmental reasons, it is not productive to conduct a Field Investigation prior to completion of a draft environmental document. It has been our experience that environmental protests have little chance of being resolved prior to preparation of an environmental document.

- *Make better use of limited resources by re-focusing the direction of the Compliance Unit.*

The SWRCB should reevaluate the level of effort being directed to certain compliance inspections. Staff's identification of small (sometimes 1 acre-foot or less) unpermitted reservoirs on aerial photographs is adding to the backlog of applications waiting to be processed. While staff time is spent identifying and processing insignificant unpermitted projects, there are applicants with bona-fide projects that have been waiting up to 10 years to get through the permit process. In addition, staff is inspecting existing permitted and licensed projects in certain watersheds with no apparent consideration of the significance that might result from these inspections. The SWRCB should evaluate the effectiveness of this policy and redirect staff resources, if necessary, to permitting and compliance matters with the greatest need and significance.

We look forward to having an opportunity to participate in a discussion with you and your staff at the Public Meeting. Please contact me prior to the meeting if you have any questions regarding our comments.

Very truly yours,

WAGNER & BONSIGNORE
CONSULTING CIVIL ENGINEERS

Nicholas F. Bonsignore, P.E.